IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

Bail Appl..No. 7521 of 2007()

CRLMC.1141/2007 of ADDL.DISTRICT COURT, KOZHIKODE
CRIME NO.63/07 OF CHELANNUR EXCISE RANGE

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: PETITIONER/ACCUSED

UNNERIKUTTY, S/O.PACHUKUTTY,
AGED 55 YEARS, RESIDING AT CHIRUMGOTTIL HOUSE,
ECHANNUR DESOM, CHELANNUR VILLAGE, KOZHIKODE
TALUK.

BY ADV. SRI.V.V.SURENDRAN

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. EXCISE INSPECTOR,
CHELANNUR EXCISE RANGE,
KOZHIKODE.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.7521 of 2007

Dated this the 17th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations in a crime registered under the Kerala Abkari Act. The crux of the allegations is that when the excise party on receipt of prior information reached the shed belonging to and in the possession of the petitioner, 40 litres of wash and 3.5 litres of arrack were found available in such shed. The petitioner was not available to be arrested. No other person was also available in the shed. The contraband article was seized by the excise party and the occurrence report was lodged on 20.10.07. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has no nexus with the shed in question or the contraband articles which were allegedly available in the shed. Totally false allegations are now being raised against the petitioner. Recovery from such an open shed cannot expose the petitioner to any charge of culpable conduct, urges the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the available inputs do point to the complicity of the petitioner. Witnesses have been questioned. The Secretary of the Chelannur Grama Panchayat has issued a certificate to confirm that the shed in question belongs to and is in the possession of the petitioner. At this stage, there is absolutely no reason to assume that the allegations against the petitioner are not well founded. There is no circumstance justifying or warranting the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. The certificate issued by the Secretary of the local Grama Panchayat has been perused by me. The relevant portion in the case diary has been read over to me. I shall, at this early stage, not embark on a detailed discussions about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that after considering all the available inputs, I find merit in the opposition by the learned Public Prosecutor. I am not

satisfied that there are any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I agree with the learned Public Prosecutor , is a fit case where the petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail.

5. This application is, in these circumstances, dismissed, but I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-